

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TUBE-MAC INDUSTRIES, INC.)	
GARY MACKAY and DAN HEWSON)	
Plaintiffs,)	Civil Action No.
)	
v.)	JURY TRIAL DEMANDED
)	
STEVE CAMPBELL and)	
TRANSGAZ, INC.)	
Defendant.)	

COMPLAINT FOR CORRECTION OF INVENTORSHIP

Plaintiffs. Tube-Mac Industries, Inc. Gary Mackay and Dan Hewson through their attorneys, Buchanan Ingersoll & Rooney PC, alleges as follows:

Jurisdiction and Parties

1. This is an action for correction of inventors in United States Patent No. 9,376,049 B2 under the United States Patent Laws, 35 U.S.C. § 1 et seq., including §§ 116 (Inventors) and 256 (Correction of Named Inventor).

2. Plaintiff Tube-Mac Industries Inc. (hereinafter referred to as “TUBE-MAC”) is a Pennsylvania corporation having an address at 420 Halstead Blvd., Zelienople, PA 16063.

3. Plaintiff, Gary Mackay (hereinafter referred to as “MACKAY”) is an individual residing at 266 Nakoma Road, Ancaster, Ontario, L69 1TL, Canada.

4. Plaintiff Dan Hewson (hereinafter referred to as “HEWSON”) is an individual residing at 202 Rosemary Lane, Ancaster, Ontario, Canada L9G 2K7.

5. Defendant Steve Campbell (hereinafter referred to as "CAMPBELL") is an individual residing at 29A Queens Road, St. John's, Newfoundland A1C 2A4 Canada and the only named inventor in United States Patent No. 9,376,049 B2 ("the '049 patent").

6. Defendant, Transgaz, Inc. (hereinafter referred to as "TRANSGAZ") is a corporation having a place of business at 218 Water Street, Suite 210, St. John's Newfoundland, A1C 1A9 Canada.

7. CAMPBELL is the president of TRANSGAZ.

8. This Court has personal jurisdiction over CAMPBELL and TRANSGAZ under the Pennsylvania long-arm statute because the issuance of the '049 patent has caused harm to TUBE-MAC in this district.

9. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338. Venue is proper under 28 U.S.C. § 1391(b) and (c).

Facts

10. United States Patent No. 9,376,049 B2 issued on June 28, 2016, for Method of Fabricating Type 4 Cylinders and Arranging in Transportation Housings for Transport of Gaseous Fluids. A copy of the '049 patent is attached as Exhibit 1.

11. The '049 patent issued from a national stage application of PCT Application No. PCT/CA2012/000778 filed on August 22, 2012. That application claims the benefit of United States provisional application No 61/526,020 filed on August 22, 2011, and United States provisional application No 61/532,453 filed on September 8, 2011.

12. CAMPBELL is identified as the sole inventor in the '049 Patent.

13. CAMPBELL assigned his rights to the '049 patent to TRANSGAZ by a written assigned dated February 25, 2014, that is recorded in the United States Patent and Trademark Office at REEL: 032504 FRAME: 0855. A copy of the recorded assignment is attached as Exhibit 2.

14. The '049 patent contains 15 claims. Claim 1 is the only independent claim and says:

1. A lightweight intermodal container or road trailer based system for transporting refrigerated gaseous fluids, comprising:

an enclosed and insulated transportation housing; a plurality of low-temperature resistant pressure vessels at least three feet in diameter secured within said transportation housing for containing said gaseous fluids, each of said pressure vessels including a body portion and opposing domed end portions attached to said body portion, each of said domed end portions having a wall thickness that is greater than a wall thickness of said body portion and an opening; and

at least one port boss affixed to each of said domed end portions, said at least one port boss including an inner component and an outer component, said inner component including an inner pipe and an inner plate transversely extending from said inner pipe, and said outer component including an outer pipe and an outer plate transversely extending from said outer pipe, wherein said inner pipe is inserted through said opening in each of said domed end portions and through said outer pipe such that said inner component and said outer component are compressed together to cause said inner plate to engage an inner surface of a respective one of said domed end portions and said outer plate to engage an outer surface of said respective one of said domed end portions to affix said at least one port boss to each of said domed end portions.

15. CAMPBELL did not solely invent the port boss that is claimed in claim 1. That port boss was co-invented by MACKAY, HEWSON and CAMPBELL. MACKAY and HEWSON conceived and demonstrated to CAMPBELL that said inner component and said outer component could be compressed together to cause said inner plate to engage an inner surface of a respective one of said domed end portions and said outer plate to engage an outer surface of said

respective one of said domed end portions to affix said at least one port boss to each of said domed end portions as set forth in claim 1 of the '049 patent.

16. In 2007 CAMPBELL told MACKAY and HEWSON that there was a problem with getting a good seal between the then existing boss and the fiberglass vessel used to store and transport compressed gas. That boss had a threaded connection that when tightened often would not seal properly or would distort the plastic or fiberglass vessel. CAMPBELL asked MACKAY and HEWSON if they could solve that problem.

17. In response to that request MACKAY and HEWSON designed and made the boss shown in the dated photographs and engineering drawings attached as Exhibit 3.

18. In 2007 MACKAY and HEWSON showed this boss to CAMPBELL and demonstrated how the boss is connected to the vessel. They have a video taken in 2007 in which CAMPBELL can be seen observing that demonstration of the port boss assembly being attached to a portion of a vessel.

19. Darrell Hawkins, who was then president of Trans Ocean Gas Ltd. and is now working in Indonesia, observed that demonstration. Attached as Exhibit 4 is a declaration from Mr. Hawkins describing what he observed.

20. Figures 5-7 of the '049 patent are drawings of the boss created by MACKAY and HEWSON. A comparison of those figures to the drawing and photographs in Exhibit 3 confirms this.

21. The boss shown in Exhibit 3 meets all the requirements of claim 1 of the '049 patent. This port boss has an inner component and an outer component. The inner component has an inner pipe and an inner plate transversely extending from the inner pipe. The outer component has an outer pipe and an outer plate transversely extending from the outer pipe. During installation of the boss in an opening in the domed end portion of a pressure vessel the inner pipe is inserted through the opening in the domed end portion and through the outer pipe. Then the inner component and the outer component are compressed together to cause said inner plate to engage an inner surface of the domed end portion and the outer plate to engage an outer surface of the domed end portion to affix the port boss to the domed end portion.

22. Because MACKAY, HEWSON and CAMPBELL co-invented the port boss claimed in claim 1 and MACKAY and HEWSON disclosed and demonstrated to CAMPBELL that the inner component and the outer component could be compressed together to cause the inner plate to engage an inner surface of a respective one of said domed end portions and the outer plate to engage an outer surface of said respective one of said domed end portions to affix the port boss to a domed end portion of a pressure vessel for transporting fluids they are joint inventors with CAMPBELL of the system for transporting refrigerated fluids that is claimed in the '049 patent.

23. Canadian patent 2,845,724, and Chinese patent 102890480 as well as published European Patent application, EP 2748512 A4, disclose and claim the same system for transporting refrigerated fluids that is claimed in the '049 patent. These patents and pending application also identify CAMPBELL as the sole inventor.

24. TUBE-MAC manufactures and sells pipe couplings for connecting pipes to vessels. TUBE-MAC has the ability to manufacture the boss in Exhibit 3 and the container or road trailer based system for transporting gaseous fluids that is disclosed and claimed in the '049 patent.

25. TUBE-MAC has had and continues to have opportunities to manufacture the boss in Exhibit 3 for use in the container or road trailer based system for transporting gaseous fluids that is disclosed and claimed in the '049 patent. However, TUBE-MAC is and has been unable to pursue these opportunities because of the '049 patent.

26. MACKAY and HEWSON have an obligation to assign their patent rights in the boss in Exhibit 3 to TUBE-MAC as well as their patent rights in the container and road trailer based system for transporting gaseous fluids that is disclosed and claimed in the '049 patent.

27. If MACKAY and HEWSON are added as inventors of the '049 patent, then TUBE-MAC could make and sell the container or road trailer based system for transporting gaseous fluids that is disclosed and claimed in the '049 patent.

28. Plaintiffs asked CAMPBELL to add MACKAY and HEWSON as co-inventors to the '049 patent, but he has refused to do so.

COUNT I

Correction of Inventorship of U.S. Patent No. 9,376,049 B2

29. Plaintiffs incorporate by reference paragraphs 1 through 28 as though fully set forth herein.

30. An actual and justiciable controversy exists regarding whether MACKAY and HEWSON should be named as co-inventors of the container and road trailer based system for transporting gaseous fluids that is disclosed and claimed in the '049 patent and whether they were erroneously omitted as inventors.

31. Plaintiffs seek an order directing the Director of the United States Patent and Trademark Office to correct inventorship of the '049 patent to name MACKAY and HEWSON as co-inventors.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff's pray for judgment as follows:

(a) An order directing the Director of the United States Patent and Trademark Office to issue a certificate correcting inventorship of the '049 patent by including Gary Mackay and Dan Hewson as co-inventors of the claims of the '049 patent;

(b) An order directing the Defendants to correct inventorship of Canadian patent 2,845,724, Chinese patent 102890480 and published European Patent application, EP 2748512 A4, by including Gary Mackay and Dan Hewson as co-inventors of the claims of those patents and pending application;

(c) A declaration that this case be deemed exceptional pursuant to 35 U.S.C. section 285, as appropriate and provided by law;

(d) Reasonable attorneys' fees, costs, and expenses, as appropriate and provided by law; and

(e) Such other and further relief as the Court deems just and proper,

A JURY TRIAL IS DEMANDED.

TUBE-MAC INDUSTRIES INC.
GARY MACKAY and DAN HEWSON

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